HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case

WPMB No. 566 of 2005

Radha Nainwal

Vs.

State of Uttaranchal through District Magistrate Dist Nainital & others.

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 25.4.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 566 (MB) OF 2005

Radha Nainwal,
W/o Sri Godhan Singh Nainwal,
R/o University Out House Mallital
District Nainital .....Petitioner.

Vs.

1. State of Uttaranchal, through District Magistrate, District Nainital.
2. Municipal Board Nainital, through its Executive Officer.
3. Chairman Municipal Board, Nainital

.....Respondents.

Dated: 25.04.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma, Advocate for the petitioner and Standing Counsel for the respondents no. 1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 30.05.2002 and 27.05.2005 passed by the respondent no. 2 (Annexures No. 9 and 14 to the writ petition).

Briefly stated, prior to 1976-77, the licence for rickshaw No. 29 was issued in favour of one Mr. Jodh Singh, who happens to be the father in law of the petitioner. Thereafter it was renewed for the last time during the life time of Mr. Jodh Singh till 30.06.1994.

During the subsistence of the licence, a notice was issued to the daughters of the deceased, Smt. Parvati, Smt. Bachuli

and Gaga on 10.06.1995, 15.06.1995 and 30.06.1995 and they respectfully submitted no objection in the office of resp0ondent no. 2. In the said process of transfer, Smt. Jayanti Nainwal, widow of the deceased too on 30.06.1995 submitted an affidavit thereby supporting her application for transfer.

A representation was filed on 20.07.1995 by which the permission was granted for transfer and Smt. Jayanti Nainwal was called upon to deposit transfer fee as well late fee. The licence was transferred in the name of Smt. Jayanti Nainwal. The licence continued in the name of Smt. Jayanti Nainwal widow of Mr. Jodh Singh for the year, 1995-96, 1996-97.

Due to old age of Smt. Jayanti Devi, she showed her willingness to get the licence of rickshaw no. 29 transferred in favour of her daughter Smt. Bachuli Devi by filing an affidavit before the respondent no. 2.

The said licence was transferred in the name of Bachuli Devi on 15.05.1997. Subsequently, after the said transfer of the licence made in favour of Bachuli Devi, was operated by her for the year, 197-98, 1999-2000, 2000-2001 and 2001-2002.

Thereafter, Smt. Bachuli Devi expressed her willingness to get the licence transferred in the name of the daughter in law of lat Mr. Jodh Singh. The licence was transferred on 04.05.2002 in favour of Ms. Radha Nainwal.

However, the petitioner has applied for renewal of the licence for the year, 2005-2006. This application was rejected. The petitioner preferred an appeal. During the pendency of the appeal, the licence was transferred to other persons. The petitioner has challenged the order of cancellation of the licence.

On 27ht June, 2005 following order was passed:-

"Learned counsel for the petitioner seeks adjournment to file rejoinder affidavit to the counter affidavit of

respondents Nos. 2 and 3. The counter affidavit is not on record. Learned counsel for respondents Nos. 2 and 3 submits that it is being filed in the Registry. Rejoinder affidavit, if any, be filed within two weeks.

Learned counsel for the respondents Nos. 2 and 3 has no case that under the rules and byelaws of the respondents, there is any stipulation that the spouse of a Government employee cannot be the owner of a Cycle Rickshaw. He is also not in a position to point out any provisions in the rules or the byelaws which disqualifies the petitioner to be the owner and licensee of the Cycle Rickshaw.

In such circumstances, the interim order passed on 09.06.2005 is extended until further orders."

A perusal of the byelaws, which has been framed under 298 (2) of the Municipalities Act shows to the following effect:-

> *2. (a) A person desirous of having a driver's licence shall submit an application, in duplicate to Licensing Officer giving full and correct particulars as may be asked for the Licensing Officer, and produce a medical certificate, issued by the Municipal Medical Officer of Health, Nainital as to his age, phyeal fitness and identification marks and three '1X3' prints of his photographs with his application or subsequently according to the directions of the Licensing Officer. A licence for driving under these bye-laws shall be issued only to the person actually driving the cycle rickshaw on furnishing a security of Rs. 10. The driving licence fee will be Rs. 5 per year or part of a year ending on a March 31, in the year and the licence will be non-transferable.*
>
> *3. No licence shall be issued or renewed unless the police authorities have verified the character and antecedents*

of the person applying for a licence. In case of adverse police report, no licence will be granted or such licence if granted will be cancelled.

5. The licensing officer shall refuse to grant a licence if the vehicle is not in a good state of repair no minor shall be issued a licence nor shall any person be issued more than one Cycle Rickshaw licence in his name.

7.(vii) The licensee shall not transfer his licence to any other person but a licence may be transferred on the joint application of the persons concerned to the licensing officer, who will make the necessary alternation in the licence on payment of a fee of Rs. 2.50. P. The alterations in the licence shall be signed and dated by the licensing officer."

A perusal of the order dated 27.05.2002 shows that since the husband of Smt. Jayanit was a government servant, therefore, the licence has been cancelled. The aforesaid ground is not covered by any rule of the byelaws and the same cannot be a ground for cancellation.

All the provisions in the byelaws have been framed in order to safeguard the interest of rickshaw puller as well as licensee so that the rickshaw puller as well as the licensee may give opportunity with his license and there should not be any camouflage in transferring the licence to 3rd person and therefore, all the protections have been taken in framing the byelaws. There is no such prohibition for the husband so far as the renewal is concerned, both have independent rights under Article 21 of the Constitution of India as a separate entity so far as the livelihood is concerned and as such no restriction can be place in this regard. Article 21 provides no person shall be deprived of his life or personal liberty except the

procedure established by law and wife cannot be deprived of his livelihood because of her husband is the earning member.

In the case of ***Kapila Hindograni Vs. State of Bihar 2003 (2) AIC 18 SC,*** it has been observed as under:_

"In the 12 Misconceptions About the Right to Food (FIAN) it is inter alia stated:

"What does the Right to Food mean? Can the existence of this Right cause laziness among people? Right to Food is about respecting, protecting and fulfilling access to food producing resources and work. Therefore, the Right to Food doesn't make people lazy but busy, enabling them to feed themselves.

Would the right to food be asking for too much from the government, and advocating for big government? The Right to Food in the context of Human Rights does not mean that that state is a super-entrepreneur determining and carrying out economic activities according to its own wisdom. It means the Right to Food Oneself, which emphasizes dignity and self-reliance, very different from command economics of big government.

Does the Right to Food require a moral revolution of society, allowing human rights to become the foundation of interpersonal ethics? The Right to food does not concern interpersonal ethics, but the duty to operationally the State's obligations under Economics and Social Human Rights.

Is hunger a violation of Human Rights? Lack of access to food can have many reasons. If the State fails to respect, protect or fulfil this access, unless for lace of resources in a society, this must be termed a violation of the human rights to food. Very often, obligations of states vis-a vis the vulnerable group and persons are obvious and so is the availability of resources in society.

Is the Right to Food about good governance? Good governance is negotiable, Human Rights are not. The central concept for Human Rights is the concept of "violation" referring to the suppression of vulnerable groups and individuals, whereas the concepts of good governance all too often deal with political theory and statistical indicators. If a county has the resources, but people get marginalized or continue in deprivation, this is not bad government, but oppressions, international or not.

Is the Right to Food realized if nobody is hungry anymore? Not necessarily. The Right to Food not only means that hunger and malnutrition are eradicated, but that future malnutrition can be eradicated by Court action or other

comparable mechanisms holding the state accountable on its obligations under the Rights to Food."

…….. …….. ……

Yet again in M/S Shantistar Builders v. Narayan Khimalal Totame and others, this Court observed:

> *"Basic needs of man have traditionally been accepted to be three food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the rights to food, the right of clothing, the right to decent environment and a reasonable accommodation to live in……"*

In view of the above, a writ or certiorari is issued quashing the orders dated 30.05.2005 and 27.05.2005 passed by the respondent no. 2.

Consequently, writ petition is allowed. The matter is sent back to the Executive Officer for considering the grant of licence in accordance with law.

No order as to costs.

(Rajesh Tandon, J.)

25.04.2006

Rathour